Supreme Court, U.S.
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NO._____

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

McDERMOTT INTERNATIONAL, INC.,
Petitioner,
v.
ROSEMARY BEASLEY, WIFE OF/AND GEORGE BEASLEY,
Respondents.

Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Louisiana

PETITION FOR WRIT OF CERTIORARI

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44 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether The Louisiana Courts May Apply The Maritime Law And Statutes Of The United States To The Claim Of A Worker Employed By A Malaysian Company Pursuant To An Employment Contract Signed In Malaysian Waters Which Provides A Malaysian Remedy When He Was Injured During A Construction Project On The Malaysian Continental Shelf On A Vessel Registered In Malaysia, Flying The Flag Of Malaysia and Owned By A Malaysian Corporation?

2. Whether the Louisiana Courts May Contradict The Uniform Admiralty Law Declared By The Federal Courts In Order To Apply Their Own Principles of Admiralty Law?

3. Whether The Louisiana Courts May Engage In "Social Jingoism" In Order To Apply American Law To Injuries Occurring To Americans Anywhere In the World?

LIST OF PARTIES

The undersigned counsel of record certifies that the following persons and parties have an interest in the outcome of this case:

1. Petitioner, McDermott International, Inc., McDermott International, Inc. has no parent company. The following is a list of companies and partnerships which are partially but not wholly owned by McDermott International, Inc.: McDermott - ETPM East, Inc., McDermott - ETPM, Inc., P.T. Bataves Fabricators, Malmac Sdn. Bhd., McDermott Incorporated, P.T. Babcock & Wilcox Indonesia, McDermott Abu Dhabi Offshore Construction Company, McDermott Arabia Company Limited, Initec, Astano y McDermott International Inc., S.A., Davy McDermott Limited, McDermott - E.T.P.M. Management Services S.A., MacShelf Ltd., McDermott - ETPM (Norway), Inc.

2. Respondents, Rosemary Beasley and George Beasley.

3. Kenneth G. Engerrand, Brown, Sims, Wise & White, Henry A. King, Nesser, King & LeBlanc, Counsel for Petitioner, McDermott International, Inc.

4. Lawrence D. Wiedemann, Karl Wiedemann, Wiedemann & Wiedemann, Counsel for Respondents, Rosemary Beasley and George Beasley.

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Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Louisiana

PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

Rosemary Beasley, wife of/and George Beasley filed suit on January 27, 1992 against McDermott International, Inc. in the Civil District Court for the Parish of Orleans, Louisiana seeking recovery for injuries allegedly received by George Beasley on a Malaysian vessel on the Malaysian Continental Shelf. The suit alleged that George Beasley, a resident of Mississippi, was a seaman and entitled to recover under the Jones Act, 46 U.S.C. app. § 688, and the general maritime law. McDermott International, Inc. filed a Motion for Summary Judgment and Memorandum in Support of Motion for Summary Judgment asserting that the Plaintiffs' claims under the Jones Act and general maritime law of the United States should be dismissed because United States law does not apply to the Plaintiffs' action, and the district judge entered a judgment on April 26, 1994 that United States substantive law applied in this case. (Appendix A).

On May 24, 1994, the Louisiana Court of Appeal for the Fourth Circuit reversed the ruling of the district judge that United States law applied and held that the Plaintiffs' claims should be decided under Malaysian law. (Appendix B, *Beasley v. McDermott International, Inc.*, 637 So.2d 1219, 1221 (La. App. (4th Cir.) 1994)). On June 24, 1994, the Louisiana Supreme Court reversed the holding of the court of appeal and reinstated the decision of the district judge to apply American law. (Appendix C, *Beasley v. McDermott International, Inc.*, 640 So.2d 1326 (La. 1994)). Petitioner's Application for Rehearing to the Louisiana Supreme Court was denied on September 16, 1994. (Appendix D, *Beasley v. McDermott International, Inc.*, 642 So.2d 185 (La. 1994)).

JURISDICTION

The Petition for Writ of Certiorari seeks review of the decision of the Louisiana Supreme Court on June 24, 1994 to apply American law (the Jones Act, 46 U.S.C. app. § 688, and general maritime law of the United States) to this case. Jurisdiction is invoked pursuant to 28 U.S.C. § 1257(a). The Application for Rehearing was denied by the Louisiana Supreme Court on September 16, 1994. The Petition for Writ of Certiorari is timely filed pursuant to 28 U.S.C. § 2101(c) and Sup. Ct. R. 13.4.

STATUTE PRESENTED FOR REVIEW

This case involves a direct conflict between the Louisiana Supreme Court and the federal courts in the interpretation of the Jones Act, 46 U.S.C. app. § 688:

Recovery For Injury To Or Death Of Seaman

(a) Application of railway employee statutes; jurisdiction

> Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.

(b) Limitation for certain aliens; applicability in lieu of other remedy

> (1) No action may be maintained under subsection (a) of this section or under any other maritime law of the United States for

maintenance and cure or for damages for the injury or death of a person who was not a citizen or permanent resident alien of the United States at the time of the incident giving rise to the action if the incident occurred--

> (A) while that person was in the employ of an enterprise engaged in the exploration, development, or production of off-shore mineral or energy resources--including but not limited to drilling, mapping, surveying, diving, pipelaying, maintaining, repairing, constructing, or transporting supplies, equipment or personnel, but not including transporting those resources by a vessel constructed or adapted primarily to carry oil in bulk in the cargo spaces; and
>
> (B) in the territorial waters or waters overlaying the continental shelf of a nation other than the United States, its territories, or possessions. As used in this paragraph, the term "continental shelf" has the meaning stated in article I of the 1958 Convention on the Continental Shelf.

(2) The provisions of paragraph (1) of this subsection shall not be applicable if the person

bringing the action establishes that no remedy was available to that person--

> (A) under the laws of the nation asserting jurisdiction over the area in which the incident occurred; or
>
> (B) under the laws of the nation in which, at the time of the incident, the person for whose injury or death a remedy is sought maintained citizenship or residency.

STATEMENT OF THE CASE

The following facts were set out by the court of appeal below:

> Plaintiff George Beasley, a U.S. citizen, was injured while working in Malaysian waters aboard the Derrick Barge 52 (DB-52) owned by Malmac Sdn. Bhd. (Malmac), a Malaysian corporation. Malmac is 70% owned by Malaysians and 30% by McDermott International, Inc. (MII). MII is a foreign corporation registered under the laws of Panama. The DB-52 is a non-self-propelled barge that is registered under the laws of Malaysia and operates principally in Malaysian waters.
>
> Prior to plaintiff's injury, he signed an employment contract with MII on November 20, 1990. That agreement was apparently signed by Beasley while aboard another derrick barge, the DB-26, while working off the Malaysian coast. [fn] This employment contract was assigned to Malmac whenever an employee of MII worked for Malmac in Malaysian territory. There is an addendum to the contract wherein Beasley acknowledged this assignment.

(Appendix B, pp. B-2-B-3, 637 So.2d at 1220) (footnote supplied by the court of appeal).

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fn Previous to the contract, Beasley had been working under a contract that had been executed in the United States.

Additional facts are:

MII, a Panamanian corporation with an office in New Orleans, Louisiana, is involved in marine construction operations throughout the world. Mr. Beasley has been employed by MII, its subsidiaries and affiliates since 1964 to perform construction work (with the exception of layoffs during which time he worked for other companies). Since 1967, Mr. Beasley has worked overseas in, among other places, Kuwait, Beirut, the North Sea, Malaysia and Singapore.

Prior to working on the DB-52, Mr. Beasley was working on the DB-26 off the coast of Malaysia pursuant to an employment contract with MII which had been executed on February 7, 1990, in New Orleans, Louisiana and which specified that Mr. Beasley would work in Southeast Asia. At the time of his injury on the DB-52 on June 12, 1991, Mr. Beasley was working under a contract with McDermott International, Inc. signed on November 20, 1990 in Malaysian waters which provided for Mr. Beasley to work in Southeast Asia.

Many countries in Southeast Asia require that locally owned companies perform the marine construction work undertaken in their territorial waters. MII is a minority shareholder in Malmac Sdn. Bhd. (Malmac), a Malaysian corporation with its principal place of business in Kuala Lumpur, Malaysia. Thus, MII assigned Mr. Beasley's employment agreement to Malmac with the permission of Mr. Beasley.

The employment agreement signed by Mr. Beasley on November 20, 1990, provided that in the event of occupational illness or injury, the employee's benefits for such illness or injury shall be governed by the laws of the

country having jurisdiction over the area where the injury or illness arose (Malaysia). However, the agreement also provided that if those benefits were not at least equal to the benefits under the laws of Panama, then the employee's benefits would be adjusted to equal those in Panama. As of March 1994, Mr. Beasley was receiving ongoing medical and compensation benefits which totalled $158,759.53.

At the time of his injury, Mr. Beasley was working on the DB-52, an offshore derrick barge, which was constructed in Nagasaki, Japan in 1955 and rebuilt in Holland in 1974. The DB-52 has never entered into or operated in United States waters. The vessel has a multinational crew, a majority of whom are from Malaysia. The vessel was engaged in the construction of a platform in the Seligi Field on the Malaysian Continental Shelf. The operations, repairs and maintenance of the DB-52 were directed from Southeast Asia.

The federal questions sought to be reviewed were raised in the state court in Petitioner's Motion for Summary Judgment and Memorandum in Support of Motion for Summary Judgment asserting that Plaintiffs' claims under the Jones Act, 46 U.S.C. app. § 688, and general maritime law of the United States should be dismissed because United States law does not apply to the Plaintiffs' action. After the district judge entered a judgment on April 26, 1994, that United States substantive law applied in this case (Appendix A), Petitioner's Application for Supervisory Writs was granted by the Fourth Circuit Court of Appeal of the State of Louisiana which held that Malaysian law and not United States law applied. (Appendix B, *Beasley v. McDermott International, Inc.*, 637 So. 2d 1219, 1221 (La. App. (4th Cir.) 1994)). The Louisiana Supreme Court then granted the Respondents' Application for Supervisory Writs, reversed the judgment of the court of appeal and reinstated the district

judge's ruling that American law applies in this case (Appendix C, *Beasley v. McDermott International, Inc.*, 640 So.2d 1326 (La. 1994)).

REASONS FOR GRANTING THE WRIT

1. The Louisiana Supreme Court Is Not The Supreme Court of Admiralty Law

The courts in Louisiana have a history of confrontation with the federal courts over principles of federal maritime law and interpretation of federal statutes. In numerous situations, the Louisiana courts have disagreed with the federal courts and declined to follow applicable federal law or have applied principles of Louisiana law rather than the governing federal law. Examples include the refusal to follow the exclusive remedy provisions of the Longshore & Harbor Workers' Compensation Act, 33 U.S.C. § 905(a) (LHWCA), for employees covered under the LHWCA who receive injuries on land,[1] the awarding of damages in maritime cases which are not granted by the federal courts,[2]

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[1]*Compare* Peter v. Hess Oil Virgin Islands Corp., 903 F.2d 935, 952-53 and n.17 (3d Cir. 1990), *cert. denied*, 498 U.S. 1067 (1991), and Fillinger v. Foster, 448 So.2d 321, 326 (Ala.), *cert. denied*, 469 U.S. 872 (1984) (declining to follow state law and upholding the exclusive remedy provision of the LHWCA) *with* Poche v. Avondale Shipyards, Inc., 339 So.2d 1212 (La. 1976), *appeal dismissed*, 434 U.S. 803 (1977) (application of Louisiana law to permit worker's suit against officers and fellow employees of employer company despite exclusive remedy provision of the LHWCA).

[2]*Compare* Mistich v. Pipelines, Inc., 609 So.2d 921, 934-35 (La. App. (4th Cir.) 1992), *writ denied*, 613 So.2d 996 (La.), *cert. denied*, 113 S. Ct. 3020 (1993) (declining to follow Miles v. Apex Marine Corp., 498 U.S. 19 (1990) and awarding punitive damages in an unseaworthiness claim) *with* Miller v. American President Lines, Ltd., 989 F.2d 1450, 1454-59 (6th Cir.), *cert. denied*, 114 S. Ct. 304 (1993) (holding that

and the application of Louisiana workers' compensation remedies for injuries occurring on the outer Continental Shelf of the United States despite the provision of the Outer Continental Shelf Lands Act (OCSLA) that compensation for injuries shall be payable under the LHWCA.[3] 43 U.S.C. § 1333(b).

A more recent dispute between the Louisiana courts and the federal courts involved the forum non conveniens doctrine. Disagreeing with the view of the United States Court of Appeals for the Fifth Circuit on the issue whether the state courts must apply the forum non conveniens doctrine in admiralty courts,[4] the Louisiana Supreme Court held that the doctrine was procedural and that the Louisiana courts could decline to follow the forum non conveniens doctrine in cases filed in Louisiana state court. *Markzannes v. Bermuda Star Line, Inc.*, 545 So.2d 537 (La. 1989), *cert. denied*, 493 U.S. 1043 (1990). After this Court agreed with

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punitive damages are not available in an unseaworthiness action based on this Court's decision in *Miles*).

[3]*Compare* LeSassier v. Chevron USA, Inc., 776 F.2d 506, 508-10 (5th Cir. 1985) (rejecting application of Louisiana law in connection with an injury on a platform located on the outer Continental Shelf off the Louisiana coast because of the provisions of the OCSLA and LHWCA) *with* Thompson v. Teledyne Movible Offshore, Inc., 419 So.2d 822, 828 (La. 1982), *appeal dismissed*, 464 U.S. 802 (1983) (allowing worker injured on a platform on the outer Continental Shelf off the coast of Louisiana to bring a suit to recover Louisiana workers' compensation benefits). The Texas courts have also rejected the Louisiana Supreme Court's interpretation of the OCSLA and follow the view of the federal courts. Torch Operating Co. v. Bartell, 865 S.W.2d 552, 557 (Tex. App.--Corpus Christi 1993, writ denied).

[4]*E.g.*, Exxon Corp. v. Chick Kam Choo, 817 F.2d 307, 320-21 (5th Cir. 1987), *rev'd on other grounds*, 486 U.S. 140 (1988); *see also* Ikospentakis v. Thalassic Steamship Agency, 915 F.2d 176, 179-80 (5th Cir. 1990).

the Louisiana Supreme Court that the Louisiana courts are not bound to apply the forum non conveniens rule in cases filed in the Louisiana state courts, *American Dredging Co. v. Miller*, 114 S. Ct. 981 (1994), the Louisiana Supreme Court has now turned its attention from procedural matters to substantive principles of admiralty law and the jurisdictional reach of federal statutes. Emboldened by its success in *Miller*, the Louisiana Supreme Court ruled in the present case, contrary to the principles enunciated by this Court and contrary to the uniform rule applied by the United States Courts of Appeals, that American law follows Americans around the world as they work on foreign vessels owned by foreign companies in localized operations in foreign waters.

While the Louisiana Supreme Court may determine the procedure to be applied in the Louisiana state courts, it is not the Supreme Court of substantive principles of admiralty law, nor may the Louisiana Supreme Court extend the application of federal statutes into the affairs of other countries without regard for the relevant interests of the international community. The present case involves the question whether a federal statute, the Jones Act, 46 U.S.C. app. § 688, and the general maritime law of the United States apply to an injury on a Malaysian vessel operating in navigable waters off the coast of Malaysia. This Court succinctly summarized the authority of the state courts in maritime settings in *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625 (1959), holding that state courts are bound by substantive principles of admiralty law:

> The legal rights and liabilities arising from that conduct were therefore within the full reach of the admiralty jurisdiction and measurable by the standards of maritime law. If this action had been brought in a state court, reference to admiralty law would have

> been necessary to determine the rights and liabilities of the parties.

Id. at 628 (citations omitted).

The Louisiana Supreme Court has usurped the role of this Court by interpreting the Jones Act and rewriting the general maritime law of the United States in order to conform to its protectionist philosophy that Americans should be able to assert American maritime remedies wherever they work around the world. The Louisiana Supreme Court has declined to recognize the admiralty law enunciated by this Court and has contradicted the uniform application of admiralty law by the federal appellate courts. Therefore, Petitioner, McDermott International, Inc., respectfully prays that this Honorable Court grant its Petition for Certiorari to the Louisiana Supreme Court to address the authority of the Louisiana Supreme Court to ignore controling principles of maritime law in its interpretation of federal maritime statutes and federal admiralty law.

2. Conflict With The Decisions Of This Court And The Circuit Courts

The decision of the Louisiana Supreme Court below misapplies the decisions of this Court and directly contradicts the decisions of the federal courts which follow the reasoning of this Court. The decision whether to apply the Jones Act and general maritime law of the United States to an international dispute was addressed by this Court in three cases: *Lauritzen v. Larsen*, 345 U.S. 571 (1953); *Romero v. International Terminal Operating Co.*, 358 U.S. 354 (1959); and *Hellenic Lines Ltd. v. Rhoditis*, 398 U.S. 306 (1970). Larsen, a Danish seaman, was injured in Havana on a Danish ship owned by Lauritzen, a Danish citizen. After receiving compensation under Danish law, Larsen brought

suit against Lauritzen in New York seeking to recover under the Jones Act, 46 U.S.C. app. § 688. Larsen relied on the "literal catholicity" of the language of the Jones Act which extends a remedy to "any seaman who shall suffer personal injury in the course of his employment." *Lauritzen*, 345 U.S. at 576 (quoting the Jones Act, 46 U.S.C. app. § 688). However, this Court recognized that our maritime statutes were "enacted with regard to a seasoned body of maritime law developed by the experience of American courts long accustomed to dealing with admiralty problems in reconciling our own with foreign interests and in accommodating the reach of our own laws to those of other maritime nations." *Lauritzen*, 345 U.S. at 577. Thus, the Court interpreted the Jones Act in accordance with the "usage as old as the Nation," which applies such statutes "only to areas and transactions in which American law would be considered operative under prevalent doctrines of international law." *Id.* In order to accommodate these concerns, the Court reviewed seven factors which "are generally conceded to influence choice of law to govern a tort claim, particularly a maritime tort claim." *Lauritzen*, 345 U.S. at 583. These factors are:

1. Place of the Wrongful Act
2. Law of the Flag
3. Allegiance or Domicile of the Injured
4. Allegiance of the Defendant Shipowner
5. Place of Contract
6. Inaccessibility of Foreign Forum
7. Law of the Forum

An eighth factor was added to the equation in *Rhoditis*, the shipowner's base of operations. *Rhoditis*, 398 U.S. at 309. These factors apply both to the claim under the Jones Act and to the claims under the general maritime law. *Romero*, 358 U.S. at 382.

The test for application of American law "is not a mechanical one." *Rhoditis*, 398 U.S. at 308. Instead, this Court has given weight and significance to the factors according to their proper application to international maritime commerce. In particular, the Court recognized the paramount importance of the law of the flag: "Perhaps the most venerable and universal rule of maritime law relevant to our problem is that which gives cardinal importance to the law of the flag." *Lauritzen*, 345 U.S. at 584. The considerations supporting application of the law of the flag "must prevail unless some heavy counterweight appears." *Id.* at 586. The Court explained: "It is significant to us here that the weight given to the ensign overbears most other connecting events in determining applicable law." *Id.* at 585.

Lauritzen, Rhoditis and *Romero* dealt with injuries sustained by foreign seamen. However, following the analysis set forth by this Court in *Lauritzen-Rhoditis*, the federal appellate courts have repeatedly dealt with injuries to citizens and permanent residents of the United States in situations which are virtually identical to the present case. The appellate courts in each circuit which has addressed the issue have uniformly applied the principles from *Lauritzen-Rhoditis* to hold that American law does not follow Americans when they travel to foreign waters to work on foreign vessels in localized operations in foreign waters. Contrary to these decisions, the Louisiana Supreme Court now permits litigants to engage in forum shopping not just for a favorable forum, but to obtain a different remedy and different result.

The United States Court of Appeals for the Fifth Circuit (the circuit court for Louisiana) has twice held, in fact situations almost identical to the present case, that United States law does not follow Americans who go to work

on foreign vessels in localized foreign operations. *Schexnider v. McDermott International, Inc.*, 817 F.2d 1159 (5th Cir.), *cert. denied*, 484 U.S. 977 (1987); *Fogleman v. Aramco (Arabian American Oil Co.)*, 920 F.2d 278 (5th Cir. 1991). Schexnider, an American citizen, entered into an employment contract in the United States with McDermott International, Inc. to work in Southeast Asia. He was injured in the Java Sea off the coast of Indonesia on the Derrick Barge 21, which was an Australian flagged vessel owned by an Australian corporation. Following the *Lauritzen-Rhoditis* factors as explained by this Court, the district court and Fifth Circuit concluded that Australian law, not American law, applied.

Schexnider made all of the arguments proffered by the Beasleys in the present case--that American law should apply to an American who has entered into an employment contract in the United States to work for a foreign subsidiary of McDermott, a Panamanian corporation which does business in the United States. Applying the reasoning from *Lauritzen-Rhoditis*, the Fifth Circuit flatly rejected these contentions. The fact that the "ultimate parent corporation," which owned an interest in the foreign company which owned the vessel was McDermott, a corporation doing business in the United States, was not considered to be significant given the fact that the day-to-day operations of the vessel were controlled by the Australian subsidiaries. *Id.* at 1162. The signing of the employment contract in the United States was not given any weight because the contract specifically provided that the Plaintiff was employed to work in Southeast Asia. *Id.* Following the principles enunciated by this Court in *Lauritzen*, the Fifth Circuit gave "particular significance" to the fact that Schexnider was injured on an Australian flagged vessel, applying "'the most venerable and universal rule of maritime law,' which 'overbears most other connecting events in determining applicable law . . . unless some heavy

counterweight appears.'" *Id.* (quoting *Lauritzen*, 345 U.S. at 584, 585, 586). In contrast to the *Lauritzen-Rhoditis* factors which favored application of Australian law was merely the fact that Schexnider was an American citizen. In view of the heavy balance of factors in favor of applying Australian law, the court held that Australian law governed the suit. *Schexnider*, 817 F.2d at 1162.

As in *Schexnider*, Beasley, an American citizen, was engaged by McDermott International, Inc., a Panamanian corporation which does business in the United States, to work in Southeast Asia (Malaysia). The employment agreement was assigned to Malmac, a Malaysian corporation, with Beasley's consent. This contract was executed in Malaysian waters; however, the prior contract executed by Beasley had been signed in the United States, like that in *Schexnider*. As in *Schexnider*, Beasley's contract specified that he would be assigned to work in Southeast Asia, and Beasley was injured on a vessel owned by a local company (Malmac, a Malaysian corporation) which was registered in and flew the flag of that country (Malaysia). Therefore, *Beasley* presents virtually the identical situation as in *Schexnider*. The only pertinent factor under *Lauritzen-Rhoditis* favoring American law is the citizenship of the plaintiff. In fact, the only real difference between *Schexnider* and *Beasley* is the particular area of Southeast Asia in which the plaintiff worked. *Schexnider* compels the conclusion that Malaysian law would apply to the present case based on the *Lauritzen-Rhoditis* factors.

Ignoring *Schexnider* and ignoring the heavy balance of the *Lauritzen-Rhoditis* factors against the application of American law, the Louisiana Supreme Court ruled in the present case that the nationality of the Plaintiff, together with McDermott International, Inc.'s minority ownership in Malmac, owner of the Malaysian vessel, was sufficient to

counterbalance not just the law of the flag but all of the other factors set forth by this Court. Had Beasley filed suit a few blocks down the street in federal court, the opposite holding would have resulted from that reached by the Louisiana Supreme Court.

The decision of the Louisiana Supreme Court below also conflicts with the decision of the Fifth Circuit in *Fogleman v. Aramco (Arabian American Oil Co.)*, 920 F.2d 278 (5th Cir. 1991). Fogleman, a Louisiana resident, obtained a foreign employment application in Louisiana so he could work in Saudi Arabia for Fluor Arabia, the Saudi Arabian subsidiary of a California corporation. Fogleman received a call in the United States that he was hired and then went to Saudi Arabia where he worked under a series of contracts signed in Saudi Arabia. Fogleman was assigned to supervise the electrification of an oil platform off the coast of Saudi Arabia and suffered a heart attack while swinging on a rope to transfer from the platform to a workboat alongside the platform.

Fogleman brought suit in federal court in Texas invoking the Jones Act and general maritime law. As in *Schexnider*, the Fifth Circuit did not consider the American ownership of the foreign subsidiary (in *Fogleman*, the California corporation owned a controlling interest of seventy percent) to be a pertinent factor because the base of operations for the work (day-to-day operations) was in Saudi Arabia. *Id.* at 284. Consequently, the only relevant factor favoring application of American law was the allegiance of the plaintiff. The Court reasoned that under *Lauritzen-Rhoditis*, "the allegiance of a plaintiff, even when recruited in the United States, does not mandate the application of United States law in a maritime suit when all of the other factors indicate the application of foreign law." *Id.* Thus, the Fifth Circuit held that Saudi Arabian law applied to the

claim. Like *Schexnider*, the facts in *Fogleman* mirror those in the present case. Had the Beasleys, who are residents of Mississippi, filed suit in federal court in Texas, instead of in Louisiana state court, the opposite holding would have resulted.

The opposite conclusion from that reached by the Louisiana Supreme Court would not only occur in the federal courts in Louisiana and Texas.[5] A contrary result would also be reached in all other circuits in which the issues in this case have been presented. Whether the Plaintiffs brought this suit in California on the West Coast or in New York on the East Coast, the result would be the same as in the Fifth Circuit--application of Malaysian law. *Bilyk v. Vessel Nair*, 754 F.2d 1541 (9th Cir. 1985); *Tjonaman v. A/S Glittre*, 340 F.2d 290 (2d Cir.), *cert. denied*, 381 U.S. 925 (1965).

In *Bilyk*, a United States citizen seeking work in California learned that the owners of the Mexican fishing vessel Nair needed a helicopter pilot to scout for fish. Bilyk boarded the vessel in Mexico, signed contracts for each fishing trip in Mexico and was injured on the high seas off the Mexican coast. The Nair flew the Mexican flag and was owned by a Mexican corporation. The majority shareholder, although a Mexican citizen, temporarily resided in California. Citing *Lauritzen*'s emphasis on the law of the flag and considering the other *Lauritzen-Rhoditis* factors

---

[5]The decision of the Louisiana Supreme Court to apply American law in the present case also conflicts with the opinions of the federal district courts in Texas and Louisiana which have declined to apply American law for the injuries suffered by Americans injured in localized foreign operations. *See, e.g.*, Stevenson v. Global Marine Drilling Co., 678 F. Supp. 1274, 1276 (W.D. La. 1987); Quaide v. Union Oil Co., 1991 AMC 671, 673-74 (S.D. Tex. 1990); Bodden v. Osgood, 1988 WL 137473 (E.D. La. 1988), *appeal dismissed*, 879 F.2d 184 (5th Cir. 1989).

pointing to the application of Mexican law, the Ninth Circuit held: "we will not extend the reach of American law into the province of another sovereign." *Bilyk*, 754 F.2d at 1545. As the plaintiff had chosen to work in Mexico, the court reasoned: "It would be perverse to allow him to choose his forum by holding that a return trip to Mexico is unduly onerous." *Id.* at 1543.

In *Tjonaman*, the Second Circuit addressed an injury sustained by a Dutch national who had become a legal resident alien in the United States. The plaintiff signed Norwegian shipping articles in New York to sail on a Norwegian vessel, owned by Norwegians and was injured in Ghanian waters. The plaintiff sought to invoke the general maritime law of the United States, but the Second Circuit found his residency in the United States to be insufficient "to outweigh the 'venerable and universal rule'" giving cardinal importance to the law of the flag. *Tjonaman*, 340 F.2d at 292. Thus, Norwegian law and not American law applied to the plaintiff's claim.

The choice-of-law factors enunciated by this Court have been uniformly applied by the federal appellate courts in accordance with the analysis of this Court in *Lauritzen-Rhoditis*. The fact that an American citizen or resident is the plaintiff cannot counterbalance the weight of all of the other factors when a localized operation in a foreign country's waters is being performed on a vessel registered in that country and owned by a citizen of that country. There is nothing arbitrary or fortuitous about the application of foreign law in that situation. In fact, the DB-52 has never operated in or even entered United States waters. The flag of the vessel is not one of convenience but of *necessity* to work in localized operations, such as construction of a platform on the Continental Shelf of another country. The only fortuitous result would be if a plaintiff can engage in

forum shopping to the Louisiana state courts and apply different substantive law than in any other courts in the United States or the world. Therefore, Petitioner, McDermott International, Inc. respectfully requests that this Court grant Petitioner's writ of certiorari to resolve the conflict between the decision of the Louisiana Supreme Court and the decisions of all the federal appellate courts on the application of American law to this foreign injury.

3. The Application Of American Law By The Louisiana Supreme Court Is An Improper Exercise In Social Jingoism

This case does not involve merely a conflict between federal and state courts, an improper interpretation of federal statutes or an overextension of the geographic reach of the general maritime law of the United States. The issue of paramount importance in this case is the international ramifications from the protectionist view taken by the Louisiana Supreme Court.

This Court recognized in *Romero v. International Terminal Operating Co.*, 358 U.S. 354 (1959), that the application of the Jones Act and general maritime law of the United States does not just involve a consideration of "the sovereign power of the United States to apply its law to situations involving one or more foreign contracts." *Romero*, 358 U.S. at 382 (footnote omitted). Instead, the Court set out the controlling considerations:

> But in the absence of a contrary congressional direction, we must apply those principles of choice of law that are consonant with the needs of a general federal maritime law and with due recognition of our self-regarding respect for the relevant interests of foreign

> nations in the regulation of maritime commerce as part of the legitimate concern of the international community. These principles do not depend upon a mechanical application of a doctrine like that of lex loci delicti commissi. The controlling considerations are the interacting interests of the United States and of foreign countries, and in assessing them we must move with the circumspection appropriate when this Court is adjudicating issues inevitably entangled in the conduct of our international relations.

Romero, 358 U.S. at 382-83.

These fundamental principles of the general maritime law were initially enunciated by the Court in *Lauritzen* where the Court stated that the maritime law "has attempted to avoid or resolve conflicts between competing laws by ascertaining and valuing points of contact between the transaction and the states or governments whose competing laws are involved." *Lauritzen*, 345 U.S. at 582. The Court summarized this principle as follows:

> Hence, courts of this and other commercial nations have generally deferred to a non-national or international maritime law of impressive maturity and universality. It has the force of law, not from extraterritorial reach of national laws, nor from abdication of its sovereign powers by any nation, but from acceptance by common consent of civilized communities of rules designed to foster amicable and workable commercial relations.

Id. at 581-82 (footnote omitted). Based on these considerations, the United States Court of Appeals for the Fourth Circuit, sitting en banc, stated: "If the courts of each nation with substantial contacts applied their own law, the overlapping duties imposed on shipowners would blight maritime shipping." *Dracos v. Hellenic Lines, Ltd.*, 762 F.2d 348, 351 (4th Cir.) (en banc), *cert. denied*, 474 U.S. 945 (1985).

In the present case, McDermott International, Inc. does marine construction work in localized operations in foreign countries throughout the world. In order to do business within these countries, it is necessary that McDermott International, Inc. comply with the laws of each country. For example, the DB-52 is owned and operated by Malmac Sdn. Bhd., a corporation organized and existing under the laws of Malaysia with its principal place of business in Kuala Lumpur, Malaysia. Malmac has no office or employees in the United States and does no business in the United States. McDermott International, Inc. assigned its employees to Malmac, and the employees' services were performed under the direction and control of Malmac. A majority and controlling amount of the stock of Malmac is owned by Malaysians.

When an American goes to work overseas in a localized construction operation in the waters of a foreign country on a vessel owned by a citizen of that country under an employment contract assigned to a company based in that country and organized under that country's laws, it is more than unreasonable to contend that he carries the protection of American law with him. It is simply a variety of "social jingoism" to assert that American law must be exported for the protection of Americans around the world, whether they are American companies or American workers. *DeMateos v. Texaco, Inc.*, 562 F.2d 895, 902 (3d Cir. 1977), *cert.*

denied, 435 U.S. 904 (1978); *Chirinos de Alvarez v. Creole Petroleum Corp.*, 613 F.2d 1240, 1247 (3d Cir. 1980).

The eight *Lauritzen-Rhoditis* factors were set forth by this Court because the Court moved with circumspection in adjudicating issues which are entangled in the conduct of our international relations. These factors give due regard to the relevant interests of foreign nations in the regulation of maritime commerce. In contrast, the parochial attitude of the Louisiana Supreme Court that American law must be exported with Americans who work in localized operations in foreign countries runs aground on these fundamental principles. Rather than moving with circumspection with regard to foreign operations, the Louisiana Supreme Court has boldly asserted that American law applies to a worker who signs an employment contract in Malaysian waters to work in a localized Malaysian construction operation on a vessel registered in Malaysia, flying a Malaysian flag and owned by a Malaysian company.

Applying American law to this Malaysian operation is the worst form of social jingoism. The Louisiana Supreme Court has thrown aside any consideration of the interests of Malaysia in regulating localized construction on its Continental Shelf and now dictates to Malaysia that American law applies to its construction operations any time an American steps across its border. Moreover, this attitude plays directly into the prospects for international retaliation which this Court sought to avoid by its application of the *Lauritzen-Rhoditis* factors:

> But in dealing with international commerce we cannot be unmindful of the necessity for mutual forbearance if retaliations are to be avoided; nor should we forget that any contact which we hold sufficient to warrant

> application of our law to a foreign transaction will logically be as strong a warrant for a foreign country to apply its law to an American transaction.

Lauritzen, 345 U.S. at 582.

It is unquestionable after *American Dredging Co. v. Miller*, 114 S. Ct. 981 (1994), that the Louisiana Supreme Court may choose the procedure to be applied in the state courts of Louisiana. However, the Louisiana Supreme Court has now overstepped its authority across the boundary of a sovereign country, Malaysia, to extend the protection of American law into that country's local operations. While the Louisiana Supreme Court may be sovereign over the procedure applied in the courts within the boundaries of Louisiana, it cannot ignore the dictates of this Court and the fundamental principles of general maritime law and international comity by overextending United States law into the affairs of another country.

Wherefore, Petitioner, McDermott International, Inc. respectfully prays that this Court grant Petitioner's writ of certiorari to address the reach of United States law into localized operations on the Malaysian Continental Shelf.

CONCLUSION

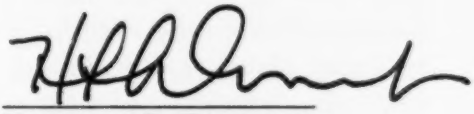
Having successfully established Louisiana as the courthouse for the world's maritime disputes, the Louisiana Supreme Court now challenges this Court and the lower federal courts for supremacy over the interpretation of a federal statute, the Jones Act, and the application of substantive principles of the general maritime law of the United States. By setting up a conflict with the federal appellate courts, the Louisiana Supreme Court has now

created a different rule of law in Louisiana state courts than is applied a few blocks down the street at the federal courthouse, across state lines or across international boundaries.

The conflict with all of the other maritime courts is only the beginning of the problem with the decision of the Louisiana Supreme Court below, however. This case involves construction work being performed on the Malaysian Continental Shelf by a Malaysian company from a vessel registered in Malaysia, flying the Malaysian flag and owned by a Malaysian company. The decision to apply American law to that operation violates fundamental principles of general maritime law and international law which are based on mutual respect for the interests of other countries. In its zeal to protect an American who was injured in a construction operation in Malaysia, the Louisiana Supreme Court has overstepped its authority, interfered with the sovereignty of a foreign nation and violated international comity.

WHEREFORE, Petitioner, McDermott International, Inc., respectfully prays that this Court grant Petitioner's writ of certiorari, reverse the decision of the Louisiana Supreme Court and reinstate the decision of the court of appeal that Malaysian law applies in the present case.

Respectfully submitted,



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APPENDIX A

CIVIL DISTRICT COURT FOR THE
PARISH OF ORLEANS
STATE OF LOUISIANA

NO. 92-1570 DIVISION "L"

ROSEMARY BEASLEY, wife of and
GEORGE BEASLEY

VERSUS

MCDERMOTT INTERNATIONAL, INC.

JUDGMENT

IT IS ORDERED that United States substantive law be applied in this case.

Writs of review from this decision shall be taken no later than ten (10) days from the signing of the judgment.

New Orleans, Louisiana, this 26 day of April, 1994.

/s/ Max N. Tobias, Jr.
JUDGE

A TRUE COPY
/s/ illegible
DEPUTY CLERK,
CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LA.

APPENDIX B

ROSEMARY BEASLEY, WIFE OF/AND GEORGE BEASLEY

VERSUS

MCDERMOTT INTERNATIONAL, INC.

NO. 94-C-0893

COURT OF APPEAL

FOURTH CIRCUIT

STATE OF LOUISIANA

* * *

ON WRIT OF CERTIORARI FROM
CIVIL DISTRICT COURT, FOR THE
PARISH OF ORLEANS
NO. 92-1570, DIVISION "L"
HONORABLE MAX N. TOBIAS, JR., JUDGE

* * *

ROBERT L. LOBRANO
JUDGE

* * *

(Court composed of Chief Judge Patrick M. Schott, Judge Robert L. Lobrano and Judge Steven R. Plotkin)

May 24 1994

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REVERSED AND REMANDED

We granted certiorari to consider the issue of whether the substantive maritime law of the United States or foreign law is to be applied in this case.[1] The trial judge ruled that American law is applicable. Defendant sought writs to this court to review that ruling.

Plaintiff George Beasley, a U.S. citizen, was injured while working in Malaysian waters aboard the Derrick Barge 52 (DB-52) owned by Malmac Sdn. Bhd. (Malmac), a Malaysian Corporation. Malmac is 70% owned by Malaysians and 30% by McDermott International, Inc. (MII). MII is a foreign corporation registered under the laws of Panama. The DB-52 is a non-self-propelled barge that is registered under the laws of Malaysia and operates principally in Malaysian Waters.

Prior to plaintiff's injury he signed an employment contract with MII on November 20, 1990. That agreement was apparently signed by Beasley while aboard another derrick barge, the DB-26, while working off the Malaysian coast.[2] This employment contract was assigned to Malmac whenever an employee of MII worked for Malmac in

---

[1] Neither personal jurisdiction over defendant, nor forum non conviniens are issues in this writ application.

[2] Previous to this contract, Beasley had been working under a contract that had been executed in the United States.

Malaysian territory. There is an addendum to the contract wherein Beasley acknowledged this assignment.

Summarizing, plaintiff is a U.S. Citizen employed by a Panamanian Corporation, who was injured while working on a Malaysian vessel, in the territorial waters of Malaysia. The issue is whether, under these facts, the plaintiff can recover under the Jones Act and U.S. general maritime law in his lawsuit filed against MII in Civil District Court.

Two U.S. Supreme Court cases, Lauritzen v. Larsen, 345 U.S. 571, 73 S.Ct. 921 (1953) and Hellenic Lines Limited v. Rhoditis, 398 U.S. 306, 90 S.Ct. 1731 (1970), are controlling.[3] Those two cases set forth eight basic factors to be considered in deciding this issue. Often referred to as the Lauritzen v. Rhoditis factors, they are: "(1) the place of the wrongful act (here, Malaysian waters); (2) the law of the flag (the DB-52 is flagged in Malaysia); (3) the allegiance or domicile of the injured worker (Beasley is a U.S. Citizen); (4) the allegiance of the defendant shipowner (the DB-52 is owned by Malmac, which is 70% Malaysian and 30% Panamanian); (5) the place of the contract (Malaysian waters); (6) the inaccessibility of the foreign forum (unknown, no evidence); (7) the law of the forum, and (8) the vessel owner's base of operations (Malaysia).

In Powell, supra, ftn. 3, our Supreme Court analyzed the Lauritzen v. Rhoditis factors and concluded no one factor is controlling. The court, however, recognized that the "law of the flag (meaning the country where a vessel is registered) is perhaps the most important factor ...." Id. at 87. It also recognized that the allegiance or domicile of the injured plaintiff is an important "counterweight" to the law of the flag.

---

[3] Federal substantive admiralty or maritime law controls. See, Powell v. McDermott International, 588 So.2d 84 (La. 1991).

In the case before us, the law of the flag and the plaintiff's domicile equally counterbalance each other. However, unlike Powell, all of the other factors (except perhaps, law of the forum, which Lauritzen noted carried little weight) favor application of Malaysian law. We do not find Powell controlling and therefore reverse the ruling of the trial court. Plaintiff's claims should be decided under the applicable Malaysian law.

REVERSED AND REMANDED.

APPENDIX C

The Supreme Court Of The State Of Louisiana

ROSEMARY BEASLEY, WIFE OF/AND
GEORGE BEASLEY

NO. 94-C - 1352

VS.

MCDERMOTT INTERNATIONAL INC.

- - - - - -

IN RE: Beasley, Rosemary; Beasley, George; - Plaintiff(s); Applying for Writ of Certiorari and/or Review; to the Court of Appeal, Fourth Circuit, Number 94CA-0893; Parish of Orleans Civil District Court Div. "L" Number 92-01570

- - - - - -

June 24, 1994

Granted. See per curiam.

WFM

PFC

PH

ROO

WATSON, J., concurs in the result.

LEMMON, J., and KIMBALL, J., would grant and docket.

DENNIS, J., not on panel.

Supreme Court of Louisiana
June 24, 1994

/s/ illegible
Deputy Clerk of Court
For the Court

JUN 24 1994

SUPREME COURT OF LOUISIANA

NO. 94-C-1352

ROSEMARY BEASLEY, WIFE OF/AND
GEORGE BEASLEY

V.

MCDERMOTT INTERNATIONAL, INC.

PER CURIAM•

As we explained in Powell v. McDermott International, Inc., 588 So. 2d 84 (La. 1991), the factors set forth in Lauritzen v. Larsen, 345 U.S. 571 (1953), and Hellenic Lines Limited v. Rhoditis, 398 U.S. 306 (1970), are not all treated equally. Although the law of the flag of the

• Dennis, J. not on panel.

vessel is perhaps the most important factor, the domicile of the injured plaintiff, especially if an American on a foreign-flagged vessel, has been considered an important "counterweight."

In the present case, plaintiff was an American domiciliary injured on a Malaysian-flagged vessel. Plaintiff's original employment contract, signed on February 7, 1990 in New Orleans, did not make foreign law applicable to the contract.[1] Although the vessel on which plaintiff was injured was registered to a Malaysian corporation, that corporation was partially owned by McDermott. We believe these factors effectively counterbalance the law of the flag.

Accordingly, we conclude that the trial court correctly held that American law applies to this case. The judgment of the court of appeal is reversed. The judgment of the trial court denying McDermott's motion for summary judgment is reinstated, and the case is remanded to the trial court for further proceedings.

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[1] Although a second contract, signed on November 20, 1990 at sea in foreign waters, purported to make foreign law applicable, no reason was given for requiring this contract and the only significant difference between this contract and the earlier contract was the foreign law clause.

APPENDIX D

The Supreme Court Of The State Of Louisiana

ROSEMARY BEASLEY, WIFE OF/AND
GEORGE BEASLEY

No. 94-C-1352

VS.

MCDERMOTT INTERNATIONAL, INC.

In Re: McDermott International, Inc, applying for Rehearing of an Order of this Court dated June 24, 1994; Parish of Orleans Civil District Court No. 92-01570; Court of Appeal, Fourth Circuit No. 92-CA-0893

September 16, 1994

Rehearing denied.

WFM
PFC
JCW
PH
FTW

LEMMON & KIMBALL, JJ., would grant the rehearing.
DENNIS, J., not on panel.

Supreme Court of Louisiana
September 16, 1994

/s/ illegible
Clerk of Court
For the Court

FILED
JAN 9 1995
OFFICE OF THE CLERK

No. 94-1022

In The

Supreme Court of the United States

October Term, 1994

McDERMOTT INTERNATIONAL, INC.,

Petitioner,

v.

ROSEMARY BEASLEY, WIFE OF/AND GEORGE BEASLEY,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Louisiana

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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LIST OF PARTIES

The following are parties to this proceeding:

1. Rosemary Beasley wife of/and George Beasley, plaintiffs/respondents
2. McDermott International, Inc., defendant/applicant
3. CIGNA Property & Casualty Insurance Company, party-defendant

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G. Gilmore and C. Black, "The Law of Admiralty" 476 (2d Ed. 1975) 8

STATEMENT OF THE CASE

In August, 1982, McDermott International, Inc., a Panamanian corporation, with its executive offices in New Orleans, Louisiana, was a wholly owned subsidiary of McDermott, Inc., a Delaware corporation domiciled in New Orleans, Louisiana, with its executive and board offices in the same building as its subsidiary corporation in New Orleans, Louisiana. Both corporations share most of the same officers and board members, predominantly residents of New Orleans.

During the pendency of **Powell v. McDermott, Inc.**, 588 So.2d 84 (La. 1991), the Delaware corporation became a wholly owned subsidiary of McDermott International, Inc., the Panamanian corporation. Both corporations continued to maintain their executive and board offices in the same building in New Orleans, Louisiana, and continued to share most of the same officers and board members, predominantly residents of New Orleans.

McDermott's offices in New Orleans, Louisiana, occupy 29,048 square feet of space, whereas its offices in Panama occupy less than 800 square feet.

All board meetings and shareholder meetings of the two corporations are held simultaneously in New Orleans, Louisiana.

McDermott's 1991 payroll in Panama was $45,536.00, approximately 1/2 of Respondent's annual salary in the same year.

McDermott did not file a corporate tax return in Panama for the years 1990 and 1991 because it generated no income in that country.

McDermott paid corporate franchise taxes in Louisiana in 1990 and 1991 and filed foreign corporation tax returns with the U.S. Internal Revenue Service in those years.

Respondent, George E. Beasley, is a 47 year-old Mississippian with a sixth grade education, and a 24-year record of employment as a seaman with McDermott International, Inc. (McDermott, hereafter), or one of its predecessor companies. He filed a Jones Act/General Maritime suit, together with his spouse, against McDermott in the Civil District Court, Parish of Orleans, on the 27th day of January, 1992, under the Savings to Suitors Clause, 28 U.S.C. § 1333(1).

Respondent, a seaman, was injured on the 12th day of June, 1992, on a vessel, the D/B 52, registered to a Malaysian corporation in which McDermott had a partial "disclosed" interest, but managed and controlled by McDermott. The vessel, at the time of the accident, was in international waters off the coast of Malaysia, the exact location not being disclosed in the record. Respondent was permanently attached to the D/B 26, not owned by the Malaysian corporation, and was aboard the D/B 52 to temporarily replace an absent foreman, also a McDermott employee.

Both the D/B 52 and D/B 26, and all personnel therein, were under the direct supervision of the barge superintendents of the respective vessels, employees of McDermott, and the vessels were engaged in the performance of contracts undertaken by McDermott.

Respondent executed a one-year employment contract with McDermott in New Orleans on February 7,

1990, as he had over the many years of his employment. The aforesaid employment contract did not include an assignment, or a clause making foreign law applicable to the contract. On November 20, 1990, plaintiff was required to sign a second contract while at sea in foreign waters aboard a McDermott vessel. The aforesaid contract contained an assignment and a clause making foreign law applicable. The only difference between the first contract and the second contract was the foreign law clause and the assignment. No reason was given to Respondent why he was being required to execute a second contract during the applicable period of the first contract, and no additional consideration was paid to Respondent.

Respondent's true relationship with McDermott is confirmed by the following:

1. McDermott paid his wages in the United States by check drawn on a United States bank in United States dollars.

2. McDermott provided pension, life insurance, accident insurance, and medical benefits to Respondent.

3. McDermott provided a statement of foreign earnings each year to Respondent to attach to his United States income tax return.

4. McDermott provided workmen's compensation, employers liability and maritime employers liability, (Jones Act, death on the high seas, and general maritime), coverage to Respondent through CIGNA, an American insurer.

5. McDermott paid for all repairs of the vessel on which Respondent was injured.

6. McDermott prepared the Employers' first report of injury on Respondent's accident.

7. McDermott paid post-accident benefits to Respondent by checks delivered to Respondent in the United States, drawn on United States banks in United States dollars.

8. McDermott purchased Respondent's repatriation airline transportation following the accident.

9. McDermott made post-accident settlements with employees injured on vessels registered to foreign corporations in which it had a "disclosed" partial interest.

10. McDermott paid post-accident medical expenses incurred by Respondent.

11. Both the D/B 52 and the D/B 26 were engaged in the performance of contracts undertaken by McDermott.

12. McDermott owned 30% of the common stock of Malmac, the Malaysian corporation.

13. McDermott had a contract with Malmac whereby it had greater control over the affairs of Malmac than the 30% stock ownership.

14. Respondent was permanently attached to the D/B 26, owned, and/or controlled, by McDermott, and was aboard the D/B 52 voluntarily to replace an absent McDermott supervisory employee.

REASONS FOR DENYING THE WRIT

1. THE LOUISIANA SUPREME COURT PROPERLY APPLIED THE HOLDINGS OF THE CONTROLLING DECISIONS OF THIS COURT TO THE FACTS OF THIS CASE.

This Court in three decisions has established criteria through which the Courts throughout the United States can determine from facts established in individual cases whether, or not, to apply American law to a seaman injured aboard a vessel with foreign identity, or connexity, at the time of the incident giving rise to the proceeding. See **Lauritzen v. Larsen**, 345 U.S. 571 (1953); **Romero v. International Terminal Operating Co.**, 358 U.S. 354 (1959); and **Hellenic Lines Ltd. v. Rhoditis**, 398 U.S. 306 (1970).

The Louisiana Supreme Court contrary to applicant's unwarranted accusation of social jingoism, made specific reference to the holdings of this Court in the aforecited decisions, and predicated their holding on an analysis of the facts under the established criteria of those cases.

Obviously, applicant disagrees with the factual conclusions of the Louisiana Supreme Court. Presumptively, applicant would have this Court grant writs in every case of this type in order to determine whether, or not, a lower Court has correctly applied the prevailing facts to the established criteria in spite of the fact that this Court in **Lauritzen**, and **Rhoditis**, supra, has delegated to the lower Courts the responsibility of "weighing" and "evaluating" the facts in arriving at a rational and satisfactory conclusion with the underlying objective of effectuating the liberal purposes of the Jones Act.

The Louisiana Supreme Court in **Powell v. McDermott International, Inc.**, 588 So.2d 84 (La. 1991), again in refutation of applicant's derogatory assessment, gave deference to the **Lauritzen-Rhoditis** test in a case involving facts indistinguishable from the facts presented in this case.

McDermott International, Inc., the defendant in **Powell**, and applicant herein, did not seek a writ of certiorari from this Court. Obviously, McDermott during the pendency of the litigation in **Powell** realized that its ducks were not in order since McDermott International, Inc., a Panamanian corporation, was a wholly owned subsidiary of McDermott, Inc., a Delaware corporation. Therefore, during the pendency of the **Powell** case a paper change of corporate status was effectuated, whereby McDermott, Inc., the Delaware corporation became the wholly owned subsidiary of McDermott International, Inc., the Panamanian company, in order to create a foreign flavor.

McDermott thereafter created, or acquired ownership in, a Malaysian corporation, and titled the D/B 52 in that corporation in order to create a fictitous foreign flag.

The significance of the aforedescribed corporate facade is manifest by the admonition in **Lauritzen** and **Powell**, supra, to ignore the insertion of a nominal foreign corporation between the flag and the true beneficial ownership of the vessel. The true beneficial owner of the vessel in this case, regardless of the flag, is McDermott, the veiled foreign corporation, and its efforts to avoid that implication are made apparent by its actions during the pendency of **Powell**, and post **Powell**.

2. THE WRIT SHOULD NOT BE GRANTED BECAUSE THE EMPLOYMENT CONTRACT OF NOVEMBER 20, 1990, IS A PARADIGMATIC CONTRACT OF ADHESION.

Respondent executed a valid, and binding, one year employment contract with applicant on February 7, 1990, which did not invoke Malaysian law, and was not assigned to a Malaysian company.

Applicant presented a new one year employment contract to Respondent for execution by him on applicant's vessel in foreign waters, without explanation, or consideration. The new contract, executed within the existing term of the original contract, contained a Malaysian law clause, and an assignment to a Malaysian company, Malmac, a subsidiary of McDermott.

The contract between Respondent and applicant is a paradigmatic contract of adhesion. Respondent did not have the power to negotiate any of its terms. If any of the terms were unacceptable, his option would have been to refuse to take the job, leave the ship at sea, and pay his own way back to the United States. Because of the disparity in bargaining power between a seaman, and his employer, American Courts have looked unfavorably upon "boilerplate" provisions in seamen's contracts of employment. **Dalla v. Atlas Maritime Co.**, 562 F.Supp. 752, 755-56 (C.D. Calif., 1983) aff'd, 771 F.2d 1277 (9th Cir. 1985).

The United States Supreme Court, and the federal courts of appeal, traditionally have ignored forum selection clauses in seamen's employment contracts. It would

be unprecedented in the jurisprudence to validate, let alone, recognize a forum selection clause which mandates the law governing the injury, or death, of a seaman, particularly under the prevailing circumstances.

In the **Hellenic** case, supra, the Court did not attach any legal significance to the fact that the employment contract of the respondent, a foreign seaman, provided that Greek law and a Greek collective-bargaining agreement applied in any disputes between the employer and the seaman, and that all claims arising out of the contract would be adjudicated by a Greek Court. **Id.** at 308.

In **Fisher v. Agios Nicholas V**, 628 F.2d 308 (5th Cir. 1980), the Fifth Circuit Court of Appeals ignored a provision in the employment contract of a foreign seaman which provided that Greek law and Greek Courts would exclusively determine his rights against his employer, including claims arising from illness or accident, due to the disparity in bargaining power between the seaman and his employer.

American Courts have generally accorded little determinative weight to such contractual choice of law-provisions. See G. Gilmore and C. Black, "The Law of Admiralty" 476 (2d Ed. 1975).

If Respondent had been presented with the November 20, 1990, contract in New Orleans, Louisiana, as had been the case throughout his long term employment with McDermott, he would have been in a position to reject same and seek employment with a more considerate employer. Obviously, applicant did not want to afford

Respondent the opportunity to give leveraged consideration to the disadvantageous inclusions in the contract forced upon him at sea on applicant's vessel.

This Court should certainly not give credence to such conduct toward its wards by granting a writ in this case.

3. THE WRIT SHOULD NOT BE GRANTED BECAUSE APPLICANT HAS FAILED TO CONCLUSIVELY ESTABLISH THE ADEQUACY OF THE FOREIGN LAW SOUGHT TO BE IMPOSED.

Applicant would have this Court relegate this American seaman to the "black hole" of Malaysian law, which, in all probability, will subject Respondent to a similar bizarre fate as that encountered by Mr. Fay in the recent notorious caning case in Singapore.

It is interesting that applicant in its contract with its captive corporation, Malmac, inserted a clause whereby any unlikely disputes between the corporations will be decided under English law. Obviously, applicant, in spite of its dominant position over its subordinate Malaysian corporation, was unwilling to subject itself to the vagaries of Malaysian law in the unlikely event that litigation would ensue between the two corporations.

The United States Fifth Circuit Court of Appeals in **Symonett Shipyards, Ltd. v. Clark**, 365 F.2d 464 (5th Cir. 1966), affirming the District Court's refusal to apply Bahamian law to an American seaman injured aboard a Bahamian-flag vessel, stated, at page 468:

> " . . . It might be well to point out that in this case the law of the United States is established

> and easily determinable, whereas the evidence relating to the law of the Bahamas is vague and indefinite. We agree with the finding of the trial court that the testimony of the expert witness relating to Bahamian law did not establish 'whether or not proof of negligence is necessary to maintain an action for unseaworthiness, or whether or not the common law defenses are an absolute bar as opposed to mitigation of a damage award.' We find no error in the trial court's ruling that the law of the United States should govern."

In the case of a seaman, as evidenced by the foregoing quote, the law must not only be determinable, but it must also provide traditional maritime remedies to the seaman. The foreign law cannot make negligence a prerequisite to unseaworthiness, or bar a seaman's claim for contributory negligence.

Applicant, in the District Court below, failed to establish that the Bahamian law, if applicable is determinable or sufficient.

The Court in **Symonett**, supra, cited the United States Supreme Court decision in **Black Diamond Steamship Corp. v. Robert Stewart & Sons, Ltd.**, 336 U.S. 386, at 396-397 (1949). In the **Black Diamond** case, Judge Frankfurter, as the organ of the Court, stated:

> "It is true that this Court has on several occasions held international rules which had passed into the 'General Maritime Law' to be subject to judicial notice . . . but where less widely recognized rules of foreign maritime law have been involved, the Court has adhered to the general

principle that foreign law is to be proved as a fact."

Applicant has not, and cannot, challenge the jurisdiction of Louisiana state court to try this matter under the Savings to Suitors' Clause, 28 U.S.C. § 1333(1) law. They only argue that the Louisiana state court should apply Malaysian law to an American seaman instead of traditional American maritime law.

Absent the required proof, this Court should not determine Malaysian law to be adequate under heretofore cited authorities and, accordingly, the granting of a writ would be vain, and useless.

OPPOSITION TO APPLICANT'S REASONS FOR GRANTING THE WRIT

1. The Louisiana Supreme Court is not the Supreme Court of Admiralty law.

Respondent has previously addressed the deference, and consideration given by the Louisiana Supreme Court to this Court's decisions in **Lauritzen** and **Rhoditis** in the Louisiana Supreme Court decisions in **Powell**, and the instant matter, in refutation of applicant's unwarranted assertion that the state Court has usurped this Court's authority by interposing itself as the "Supreme Court of admiralty law".

The Louisiana Supreme Court in **Powell**, at page 86, immediately preceding its analysis of **Lauritzen** and **Rhoditis**, stated:

> "At the outset, we note that this Court is governed by federal substantive admiralty or maritime law. **McCraine v. Hondo Boats, Inc.**, 399 So.2d 163 (La. 1981) . . . "

The other decisions of the Louisiana Supreme Court referenced in this section of applicant's brief are not germane to the issues before the Court in this case. Therefore, they will not be addressed by Respondent herein. Suffice it to say, that an analysis of the numerous decisions of the Louisiana Supreme Court in the admiralty/maritime field do not support applicant's assertion.

2. Conflict with the decisions of this Court and the Circuit Courts

A cursory review of the decisions cited by applicant will disclose that there is not any conflict between the federal circuits, and no conflict between the decision herein by the Louisiana Supreme Court, and controlling federal jurisprudence.

There are many decisions in the federal, and state, systems wherein jurists have met the "weighing" and "evaluating" requirements of **Lauritzen** and **Rhoditis** and have arrived at rational, and satisfactory, conclusions that American, or foreign, law is applicable.

Applicant has cited only those cases in which United States Circuit Courts have determined that foreign law is applicable.

It would indeed be questionable if the federal, and state, courts uniformly concluded that American, or foreign, law was applicable in every case, after the "weighing" and

"evaluating" required of the Courts under **Lauritzen** and **Rhoditis**.

It is interesting that this Court, presumptively evidencing an unwillingness to review factual determinations of lower Courts, has denied certiorari in almost every case.

Applicant cites as authority the United States Fifth Circuit Court of Appeal decision in **Fogelman v. Armco**, 920 F.2d 278 (5th Cir. 1991), as a decision which conflicts with the decision of the Louisiana Supreme Court in the instant matter. The **Fogelman** case is readily distinguishable from the factual circumstance of this case. The Court, at page 282, makes the following pertinent observation:

> "The place of the wrongful act is accorded little weight in traditional maritime cases in which the locality of the ship changes constantly. When the injury stems from work on a permanently situated off-shore oil rig, or work platform, however, the place of the wrong assumes greater importance. Fogelman was injured while transferring from a permanent oil platform to a work boat off the coast of Saudi Arabia."

Respondent herein is a traditional maritime seaman, and obviously, a different evaluation of the involved factors is required in his case as opposed to Mr. Fogelman, an off-shore platform worker in foreign waters.

Schexnayder v. McDermott International, Inc., 817 F.2d 1159 (5th Cir. 1987), likewise cited as authority by applicant, is also distinguishable from the factual circumstance before the Court herein. The corporations involved in the **Schexnayder** case *did not* conduct any business in the United States. Additionally, Australian law was found

to be adequate and Australian Courts accessible. Since the owner of the vessel was an Australian corporation, the Court concluded that Australian law should be applied to Mr. Schexnayder's claim arising out of an accident in foreign waters. In this case, applicant maintains its corporate office in New Orleans, Louisiana, and does substantial business within the State of Louisiana, and throughout the United States. Furthermore, the D/B 26 to which Respondent was permanently assigned is either owned, or controlled, by applicant, since applicant had the authority to transfer Respondent, at its will, from one vessel to another. Subsequent proceedings in the **Schexnayder** case, reported at 688 F. Supp. 234 (W.D. La. 1988), however, do shed further light on applicant's efforts to manipulate the judicial system to its advantage. The Court, therein, held applicant's deliberate effort to avoid the Louisiana Direct Action Statute by not accepting delivery of its policy of insurance in Louisiana to be an absolute simulation.

The United States Fifth Circuit Court of Appeal has also rendered two opinions, not cited by applicant, in which it has applied American law in instances wherein American seamen have been injured aboard foreign flag vessels in foreign waters, after analyzing the **Lauritzen** and **Rhoditis** factors. See **Symonett Shipyards, Ltd. v. Clark**, 365 F.2d 464 (5th Cir. 1966); and **Coats v. Penrod Drilling Corp.**, 5 F.3d 87 (5th Cir. 1993).

The Court in **Coats** specifically distinguished **Fogelman**, cited by applicant, and ignored **Schexnayder**.

The Court in **Symonett**, like the Louisiana Supreme Court herein, concluded at page 467:

> " . . . In the context of this case, we believe the most significant choice of law factor to be the nationality of the injured and deceased seamen. . . . "

The **Symonett** court, and the Louisiana Supreme Court, were not saying that the only consideration is the nationality of the seaman. What they were saying is that that factor, after the mandated "weighing" and "evaluating" of all other factors, weighted the applicability of American law in favor of the injured seamen in those cases.

Applicant cites two other cases, one from the West Coast and one from New York, which allegedly support its contention of a Circuit conflict. However, those cases, like **Schexnayder** and **Fogelman**, are distinguishable from the factual circumstance of this case. **Tjonaman v. A/S Glittre**, 340 F.2d 290 (2nd Cir. 1965), involved a suit by a Dutch national seaman, who was a resident alien in the United States for only 29 days. Tjonaman was a member of the Norwegian Seamen's Union and had signed his contract in Norway. His suit was brought against a Norwegian company which owned a Norwegian flag vessel on which Tjonaman was employed as a seaman. Obviously, the **Lauritzen** and **Rhoditis** factors weighed in favor of foreign law.

The second case, **Bilyk v. Vessel Nair**, 754 F.2d 1541 (9th Cir. 1985), involved an American seaman injured aboard a Mexican flag vessel, owned by a Mexican company based in Mexico, whose owners and shareholders were Mexican citizens and residents. Obviously, that is not the factual circumstance presented in this case.

The applicant has been dealt with fairly, and impartially, by the Supreme Court of Louisiana in keeping with the jurisprudence of this Court and the jurisprudence of the Circuit Court, and the granting of a writ in this case can only serve to sound a signal to other maritime employers that they may have an opportunity to escape their responsibility to American seamen under American law by corporate manipulation.

3. The application of American law by the Louisiana Supreme Court is an improper exercise in social jingoism.

Apparently, applicant believes that any Court that extends American law to American citizens in overseas operations is involved in social jingoism. If that be the case, this Court would not have been required to lay down the factors to be considered as it did in **Lauritzen** and **Rhoditis**. The Court could have simply stated that the law of the flag is the single, controlling, factor in any case. Obviously, the Court, with good reason, did not wish to relinquish our maritime national interest to one single factor, because of the probability of "fictitious flags" and fictitious corporations designed to create fictitious conflicts. This nation has a legitimate interest that its nationals and permanent inhabitants be not maimed or disabled from self support, as pointed out by Justice Jackson in **Lauritzen**.

American citizens that are injured on foreign vessels will, if not properly compensated, become the social liability of this country through Social Security, or other benefits. The social responsibility should fall on the

shoulders of the beneficiaries of the labors of the American seamen, who fall within the criteria of **Lauritzen** and **Rhoditis**, as does the applicant herein.

CONCLUSION

The application for a writ of certiorari by McDermott International, Inc., defendant/applicant herein, should be denied at their costs.

WHEREFORE, Respondents, Rosemary Beasley, wife of/and George Beasley, respectfully pray that this Court deny the application for writ of certiorari filed by McDermott International, Inc. herein.

Respectfully submitted,

WIEDEMANN & WIEDEMANN

LAWRENCE D. WIEDEMANN #13457
KARL WIEDEMANN #18502
821 Baronne Street
New Orleans, LA 70113
Telephone: 504/581-6180

APPENDICES

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Employment contract between Respondent and Applicant dated February 1, 1990 ..... A-1

Employment contract between Respondent and Applicant dated November 20, 1990 ..... B-1

EMPLOYMENT AGREEMENT
HOURLY AND MANUAL MONTHLY EMPLOYEES

BEASLEY, GEORGE E	428-94-9511	40200
(Name of Employee)	(Social Security No.)	(Employee No.)

MCDERMOTT INTERNATIONAL INC (hereinafter referred to as "Employer") hereby offers you employment as a SENIOR LEADERMAN (9270) in the SOUTH EAST ASIA subject to the terms and conditions herein set forth. The term of your employment will be for an indefinite period not to exceed 12 MONTHS OR JOB COMPLETION, beginning on the date of your authorized departure from UNITED STATES through your authorized departure from your work location, at a base rate of pay of:

EXPATRIATION	US $ 10.95	per	hour
PREMIUM	US $410.00	per	month
	$_____	per	_____

Your employment will be subject to the conditions set forth in the attachments to this Employment Agreement, each of which is acknowledged by Employee.

Employer may terminate your employment without cause at any time without prior notice except where the reason for your termination is completion or cessation of the job, work or project to which you are assigned. In which case Employer will give you thirty (30) days' notice prior to your termination where this is practicable.

If your services are terminated by reason of discharge for cause, or if you should terminate your employment by resignation or abandonment of your work prior to the maximum duration period of this Agreement, no vacation

pay (if applicable) and/or Contract Completion Bonus is earned and none will be paid. Further, you will bear the cost of your return transportation to your home location.

All compensation and benefits provided by Employer shall cease at the time of your termination, except as may be specifically provided for or agreed upon. Employer assumes no duties or obligations except as set forth herein and as may be required by law.

Changes in this Agreement will be valid only after they have been agreed upon mutually and confirmed in writing. The understandings set forth in this Agreement supersede all contrary oral understandings or impressions you may have obtained in conversations with Employer representative prior to the signing hereof.

In the event of accident or emergency, Employer is authorized to notify:

ROSEMARY BEASLEY	WIFE
Name	Relationship, if any
RT 4 BOX 57 BB	601-736-0601
COLUMBIA, MS 39429	Telephone
Address	

I HEREBY ACCEPT EMPLOYMENT ON THE TERMS AND CONDITIONS SET FORTH ABOVE AND ON THE ATTACHED PAGES.

/s/ George E. Beasley
(Signature of Employee) Date

/s/ illegible
(Employer's Representative)

Date of Departure FEBRUARY 7, 1990

Date of Return FEB 22 70

Attachments:
R-03/88/0908
EFFECTIVE DATE:
FEBRUARY 7, 1990

PERMANENT ADDRESS

The address of the person to be notified in the event of an accident or emergency as shown on the first page of this Employment Agreement shall be considered as your permanent address or the address of the person in whose care Employer may communicate with you. In the event of your death while outside the continental limits of the United States during the period of service under this Agreement, Employer shall attempt to communicate with the person at the given address, and in the event no directions are received from such person within a reasonable time, or in the event you have left no written instructions with Employer concerning the disposition of your remains or personal effects, you authorize Employer to make disposition of your remains according to the law where you are employed at the time of your death and to return your personal effects to the Executor or Administrator of your estate, or to the person named at the permanent address as appears to best expeditiously handle such matters.

DISCLOSURE OF INFORMATION

Employee hereby agrees that he will not, except with the prior written consent of Employer, make directly or indirectly any statement publicly whether to the press or in books, magazines, and periodicals or by advertisement or by radio, television or film or by any other medium with respect to matters relative to the operations of the Company with whom Employer is working, or with respect to matters of a political nature which might impair the

relations of Employer, Employer's customers or subcontractors, or any other companies with whom Employer is working or with any governments in the local area.

DEDUCTIONS-INCOME, F.I.C.A. AND OTHER TAXES

Employee hereby acknowledges his responsibility for payment of income taxes of his home country or countries to which he is assigned to perform services.

Under no circumstances will Employer be liable for or pay any taxes for which the employee may be liable during his foreign assignment.

PREEMPLOYMENT PROCESSING

Employee agrees to have completed the following items prior to your departure from the UNITED STATES:

1) procurement of a valid passport from the UNITED STATES, visa, or work permit; and

2) a physical examination to certify your fitness to perform the duties to which you will be assigned. (The complete final results of your preemployment physical examination will not be available for approximately four (4) days after your initial visit to our Company doctors. Your employment with Employer is contingent upon your successfully passing this physical examination.)

Employee will be paid one day's pay of eight (8) hours for each actual day of processing as determined by Employer. This processing pay will be at your base rate.

POST EMPLOYMENT PHYSICAL EXAMINATION

Employee agrees to submit to a physical examination prior to leaving your place of overseas employment or upon termination of your employment, by a physician selected by Employer.

HEALTH CARE COVERAGE

All Health Care Benefits provided by Employer shall cease on the last day of the month of termination. Following a contract completion (not including broken contracts), participating employees who will return to work immediately following the expiration of their accrued vacation time will be provided with an automatic extension of Group Health Coverage for an additional month. The only acceptable proof that an employee will return to work for Employer is a new fully executed employment agreement and/or written notification to the Corporate Employee Benefits Department by the respective Personnel Department. Employee contribution will be required for the additional month of coverage. For those employees not qualifying for the automatic extension of Group Health Coverage, Employer has an arrangement with the Travelers Insurance Company for a Group Health Conversion Plan. The respective Personnel Department can assist you should you desire this type of coverage.

USE OR POSSESSION OF DRUGS, NARCOTICS OR ALCOHOL

It is Employer's policy not to condone the use, possession or selling of alcohol, non-prescription drugs or narcotics considered dangerous or illegal by the U.S. Department of Justice or of authorities at the international location, or the arrival on Company property under the influence of such substances. If any employee is involved in any such circumstance, immediate termination of employment will result.

In addition, any employee taking prescribed medication will be required to present a note from a physician stating the name of the medication, the length of time the employee is to continue taking the medication, and a statement that the employee should be able to work while under such medication without posing danger to yourself or to other employees. In keeping with this policy, periodic searches of Company premises and equipment as well as personal belongings will be made.

Many international countries in which the Company operates have extremely severe drug laws which include the death penalty for some of the above circumstances. It is understood that if you and/or your family violate any of these countries' drug laws, the Company and your embassy, high commission or consul are virtually powerless to come to your aid.

TRANSPORTATION

Employer will furnish air transportation for you from your home location to your work site subject to the conditions set forth herein, return transportation will be furnished if you proceed directly to UNITED STATES upon completion of this Agreement.

Employer may, at its option, deduct the cost of excess luggage from your pay. If you make a request at least seven (7) days prior to the date of departure, Employer may, at its option, grant you permission to ship air freight, at its expense, up to thirty (30) additional pounds of luggage.

Employer will have the option of withholding US$155.00 from each of your first SIX full pay periods as a cash deposit for the payment of your return transportation in the event you should become obligated for its payment. If the cost of the return transportation is greater than the amount withheld, the excess will be deducted from your final wage payment and/or other monies due you. The amount withheld will be included in your final check, if you are not responsible for your return transportation.

HOURS OF WORK

Employee agrees to work such hours as may be assigned by Employer. No payment will be made for any day of absence from work unless excused by Employer. If at any time during the course of your employment you are absent from work on any given day through your willful neglect, Employer, at its option, may elect not to pay you the normal day's pay for this unauthorized absence. This

type of unauthorized absence may be considered as cause for termination of your Agreement by Employer.

EXPATRIATION PREMIUM

Employee will receive an Expatriation Premium as shown on page 1 of this Agreement when you are available for work.

CONTRACT COMPLETION BONUS/SEVERANCE PAY/ PERIOD OF SERVICE AWARD

If your base pay as stated on page 1 of this Agreement is an hourly rate, Employee will receive a Contract Completion Bonus of twenty-five percent (25%) of the total straight time portion of your pay (which is total hours worked inclusive of time off and time off not taken hours).

If your base pay as stated on page 1 of this Agreement is a monthly rate, Employee will receive a Contract Completion Bonus of twenty-five percent (25%) of your base rate of pay inclusive of Expatriation Premium.

It is agreed that this Contract Completion Bonus includes, as a part of such bonus, any payments required or related to severance, service or termination under the labor laws of the jurisdiction(s) in which you are employed.

ACKNOWLEDGEMENT:
/s/ George E. Beasley
Employee

2-9-90
Date

R-9/86/0908

MIDDLE EAST AND SOUTHEAST ASIA
HOURLY AND MANUAL MONTHLY

Time off is earned and accrued on the basis of one (1) day of time off for three (3) days of work. Time off is only earned or accrued while Employee is required to work.

Time off will be taken only after being approved in advance by the job site Superintendent or responsible Manager and will be scheduled at a time consistent with the need for Employee's service on the job assignment.

Time off will commence on the day following the arrival of Employee at Employer's onshore base in the international location. Employee must report to the international location's onshore base on the last day of approved time off or approved unpaid leave. An extension to the original period of approved time off requires the approval of the international location's management and will be considered as unpaid leave. If Employee purchases an airline ticket, it will be the Employee's responsibility to schedule his return flights prior to his departure on time off and to pay any additional cost should the ticket expire.

Visa processing is the responsibility of Employee and should be accomplished during the Employee's time off period.

Time off will be paid as eight (8) hours at Employee's base rate of pay plus Expatriation Premium for each day of paid time off taken. Time off not taken will be paid on termination of the Employment Agreement as eight (8) hours at Employee's base rate of pay for each day of time off earned and accrued but not taken as at the date of contract completion. The Contract Completion Bonus, as stipulated in the Employment Agreement, will be applied

to time off hours paid whether the time off was taken or not taken.

For each day of earned time off taken, Employer will pay a per diem allowance of $52.50. Any time off not taken pay or unpaid time off days will not attract a per diem.

Employer is not liable for any injury or illness which the Employee suffers or contracts while on time off.

ACKNOWLEDGMENTS:

/s/ George E. Beasley

2-9-90
Date

R-12/89/1010

EMPLOYMENT AGREEMENT
HOURLY AND MANUAL MONTHLY EMPLOYEES

BEASLEY, GEORGE E	428-94-9511	40200
(Name of Employee)	(E.I.S. No.)	(Employee No.)

McDermott International, Inc., a corporation organized and existing under the laws of the Republic of Panama (hereinafter referred to as "Employer"), hereby offers you employment as a SENIOR LEADERMAN (9270) in the Southeast Asia Area and/or its adjoining waters, subject to the terms and conditions set forth in this Employment Agreement (the "Agreement"). This Agreement will become effective between Employee and Employer upon your arrival at the designated work location. This term of your employment will be for a period not to exceed 12 MONTHS OR J.C. commencing on your arrival at the designated work location and will continue through your authorized departure from your work location.

Base Salary	US $ 10.95	per	hour
Expatriation Premium - 15%	US $405.00	per	month
	$_____	per	_____

Your employment will be subject to the conditions set forth in the attachments to this Agreement, each of which will be acknowledged by Employee.

Employer may terminate your employment without cause at any time without prior notice except where the reason for your termination is completion or cessation of the job, work or project to which you are assigned, in which case

Employer will give you thirty (30) days' notice prior to your termination where this is practicable.

If your services are terminated by reason of discharge for cause, or if you should terminate your employment by resignation or abandonment of your work prior to the maximum duration of this Agreement, no Contract Completion Bonus is earned and none will be paid. Further, you will bear the cost of your return transportation to your home location.

All compensation and benefits provided by Employer shall cease at the time of your termination, except as may be specifically provided for or agreed upon. Employer assumes no duties or obligations except as set forth herein and as may be required by law.

Changes in this Agreement will be valid only after they have been agreed upon mutually and confirmed in writing. The understandings set forth in this Agreement supersede all contrary oral understandings or impressions you may have obtained in conversations with Employer representatives prior to the signing hereof.

If the event of accident or emergency, Employer is authorized to notify:

Name ROSEMARY BEASLEY

Relationship WIFE

Address RT 4 BOX 57BB COLUMBIA, MS 39429

Telephone (601) 736-0601

I HEREBY ACCEPT EMPLOYMENT ON THE TERMS AND CONDITIONS SET FORTH ABOVE AND ON THE ATTACHED PAGES.

/s/ George E. Beasley	/s/ Illegible
(Signature of Employee)	Employer's Representative
Date of Execution NOV 20, 1990	Country/Area of Execution SINGAPORE

Attachments:
R-05/90/0908

INJURIES, ILLNESSES AND COMPENSATION

In the event of any occupational illness or injury, Employer and Employee agree that Employee's benefits for such occupational illness or injury shall be governed by and in accordance with the laws of the country having jurisdiction over the area where the occupational injury occurred or illness arose. Notwithstanding the foregoing, in the event that it is determined that the Employee's benefits against Employer under the laws of the country having jurisdiction are not at least equal to the benefits afforded for a like occupational illness or injury under the laws of the Republic of Panama, Employer and Employee agree that the Employee's benefits will be adjusted so that he or she will receive benefits equal to those that would have been due under the laws of the Republic of Panama.

EMERGENCIES OR ACCIDENTS

The address of the person to be notified in the event of an accident or emergency as shown on the first page of this Agreement shall be considered as the address of the person in whose care Employer may communicate with you. In the event of your death during the period of service under this Agreement, Employer shall attempt to communicate with the person at the given address, and in the event no directions are received from such person within a reasonable time, or in the event you have left no written instructions with Employer concerning the disposition of your remains or personal effects, you authorize Employer to make disposition of your remains according to the law where you are employed at the time of your

death and to return your personal effects to the Executor or Administrator of your estate or to the person named at the address as appears to best expeditiously handle such matters.

DISCLOSURE OF INFORMATION

Employee hereby agrees, except with prior written consent of Employer, not to make directly or indirectly any statement publicly whether to the press or in books, magazines and periodicals or by advertisement or by radio, television or film or by any other medium with respect to matters of a political or work-related nature which might impair the relations of Employer, Employer's customers or subcontractors, or any other companies with whom Employer is working or with any governments in the local area.

EMPLOYEE'S RESPONSIBILITY FOR TAXES

Employee hereby acknowledges responsibility for payment of income taxes of your home country or countries to which you are assigned to perform services.

Under no circumstances will Employer be liable for or pay any taxes for which Employee may be liable during this assignment.

PREEMPLOYMENT PROCESSING

Employee agrees to have completed the following items prior to your departure from your country of origin:

1) procurement of a valid passport from the country of origin, visa, or work permit and
2) a physical examination to certify your fitness to perform the duties to which you will be assigned.

POST EMPLOYMENT PHYSICAL EXAMINATION

Employee agrees to submit to a physical examination prior to leaving your place of overseas employment or upon termination of your employment by a physician selected by Employer.

HEALTH CARE AND OTHER BENEFIT COVERAGE

Eligibility period for all health care and other fringe benefits provided by Employer shall commence on the date Employee departs from his country of origin. Participation will begin in accordance with each specific plan.

All Health Care Benefits provided by Employer shall cease on the last day of the month of termination. If returning to work within one month following Contract Completion, a participating Employee will be provided with an automatic extension of Group Health Coverage. The only acceptable proof that an Employee will return to work for Employer is a new fully executed employment agreement and/or written notification to the Corporate Employee Benefits Department by the respective Personnel Department. Employee contribution will be required for the additional month of coverage.

USE OR POSSESSION OF DRUGS, NARCOTICS OR ALCOHOL

This policy is for the safety of Employee and your family, possible protection of Employee from international legal action, and the protection of Employer.

It is the Employer's policy not to condone the use, possession or selling of alcohol, non-prescription drugs or narcotics considered dangerous or illegal by the by the Employer or by the governmental authorities asserting jurisdiction over the area where the Employee is employed. If any Employee is involved in any such circumstance or arrives on Employer's property under the influence of such substances, immediate termination of employment will result.

In addition, any Employee taking prescribed medication will be required to present written proof from a physician stating the name of the medication, the length of time the Employee is to continue taking the medication, and a statement that the Employee should be able to work while under such medication without posing danger to yourself or to other employees. In keeping with this policy, periodic searches of Employer premises and equipment as well as personal belongings will be made.

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Many international countries in which the Employer operates have extremely severe drug laws which include the death penalty for some of the above circumstances. It is understood that if you and/or your family violate any of these countries' drug laws, the Employer and your

embassy, high commission or consul are virtually powerless to come to your aid.

TRANSPORTATION

Employer will furnish air transportation for you from your home location to your work site subject to the conditions set forth herein. Return transportation will be furnished if you proceed directly to your home location upon completion of this Agreement.

Employer may, at its option, deduct the cost of excess luggage from your pay. If you make a request at least seven (7) days prior to the date of departure, Employer may, at its option, grant you permission to ship air freight, at its expense, up to thirty (30) additional pounds of luggage.

Employer will have the option of withholding US$155.00 from each of your first six full pay periods as a cash deposit for the payment of your return transportation in the event you should become obligated for its payment. If the cost of the return transportation is greater than the amount withheld, the excess will be deducted from your final wage payment and/or other monies due you. The amount withheld will be included in your final check, if you are not responsible for your return transportation.

HOURS OF WORK

Employee agrees to work such hours as may be assigned by Employer. No payment will be made for any day of absence from work unless excused by Employer. If at any time during the course of your employment you are

absent from work on any given day through your willful neglect, Employer, at its option, may elect not to pay you the normal day's pay for this unauthorized absence. This type of unauthorized absence may be considered as cause for termination of your Agreement by Employer.

EXPATRIATION PREMIUM

Employee will receive an Expatriation Premium as shown on page 1 of this Agreement when you are available for work.

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CONTRACT COMPLETION BONUS/SEVERANCE PAY/ PERIOD OF SERVICE AWARD

If your base pay as stated on page 1 of this Agreement is an hourly rate, Employee will receive a Contract Completion Bonus of twenty-five percent (25%) of the total straight time portion of your pay (which is total hours worked inclusive of time-off and time-off-not-taken hours).

If your base pay as stated on page 1 of this Agreement is a monthly rate, Employee will receive a Contract Completion Bonus of twenty-five percent (25%) of your base rate of pay inclusive of Expatriation Premium.

It is agreed that this Contract Completion Bonus includes, as a part of such bonus, any payments required or related

to severance, service or termination under the labor laws of the jurisdiction(s) in which you are employed.

ACKNOWLEDGEMENT:

/s/ George E. Beasley
Employee

NOV 20, 1990
Date

R-04/90/0908

SOUTHEAST ASIA
HOURLY AND MANUAL MONTHLY

Time off is earned and accrued on the basis of one (1) day of time off for three (3) days of work. Time off is only earned or accrued while Employee is required to work.

Time off will be taken only after being approved in advance by the job site Superintendent or responsible Manager and will be scheduled at a time consistent with the need for Employee's service on the job assignment.

Time off will commence on the day following the arrival of Employee at Employer's onshore base in the international location. Employee must report to the international location's onshore base on the last day of approved time off or approved unpaid leave. An extension to the original period of approved time off requires the approval of the international location's management and will be considered as unpaid leave. If Employee purchases an airline ticket, it will be the Employee's responsibility to schedule

his return flights prior to his departure on time off and to pay any additional cost should the ticket expire.

Visa processing is the responsibility of Employee and should be accomplished during the Employee's time off period.

Time off will be paid as eight (8) hours at Employee's base rate of pay plus Expatriation Premium for each day of paid time off taken. Time off not taken will be paid on termination of the Employment Agreement as eight (8) hours at Employee's base rate of pay for each day of time off earned and accrued but not taken as at the date of contract completion. The Contract Completion Bonus, as stipulated in the Employment Agreement, will be applied to time off hours paid whether the time off was taken or not taken.

For each day of earned time off taken, Employer will pay a per diem allowance of $52.50. Any time off not taken pay or unpaid time off days will not attract a per diem.

Employer is not liable for any injury or illness which the Employee suffers or contracts while on time off.

ACKNOWLEDGEMENT:

/s/ George E. Beasley
Employee

NOV 20, 1990
Date

R-04/90/0910

HEALTH CARE COVERAGE ADDENDUM
U.S. EMPLOYEES

All health care benefits provided by Employer shall cease on the last day of the month of termination. Following a completion, participating employees are eligible for continuation of coverage in accordance with provisions of the Consolidated Omnibus Budget Reconciliation Act (COBRA). The Employer will notify you of your entitlements upon completion.

ACKNOWLEDGEMENT:

/s/ George E. Beasley
Name

Nov 20, 1990
Date

R-02-90-0831

Supreme Court, U.S.
FILED
JAN 23 1995
OF THE CLERK

No. 94-1022

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

McDERMOTT INTERNATIONAL, INC.,
Petitioner,
v.
ROSEMARY BEASLEY, WIFE OF/AND GEORGE BEASLEY,
Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Louisiana

PETITIONER'S REPLY BRIEF

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No. 94-1022

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OCTOBER TERM, 1994

McDERMOTT INTERNATIONAL, INC.,
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ROSEMARY BEASLEY, WIFE OF/AND GEORGE BEASLEY,
Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Louisiana

PETITIONER'S REPLY BRIEF

Respondents' arguments demonstrate why this Court should grant the Petition for a Writ of Certiorari. Rather than addressing the proper choice-of-law factors set forth by this Court, Respondents and the Louisiana Supreme Court have embarked on a radically different course. Following that course has caused an irreconcilable conflict between the Louisiana Supreme Court and the federal courts.

Respondents contend that there is no reason why the Louisiana Supreme Court should apply the uniform interpretation of the federal appellate courts on the choice-of-law issue. Thus, Respondents ask this Court to sanction a choice-of-law analysis which will cause forum shopping and conflicting results. In essence, Respondents' brief *supports* the granting of a writ of certiorari because a decision which upholds Respondents' position would reject the uniform interpretation of the precedents of this Court. If the fourteen points set forth by Respondent are meant to replace the factors set forth by this Court, then this Court should grant the writ of certiorari to change the law. In contrast,

Petitioner requests the Court grant a writ of certiorari to correct the change of course by the Louisiana Supreme Court and to re-establish a uniform choice-of-law rule when Americans work overseas for foreign companies in localized foreign operations.

1. Conflict With The Decisions Of This Court

Just as the Louisiana Supreme Court declined to evaluate and weigh each of the *Lauritzen-Rhoditis* factors in accordance with the analysis set forth by this Court in *Lauritzen v. Larsen*, 345 U.S. 571 (1953) and *Hellenic Lines Ltd. v. Rhoditis*, 398 U.S. 306 (1970), Respondents set out their own fourteen points, which are irrelevant to the choice-of-law analysis applied by this Court and to the analysis which has been uniformly applied by the lower federal courts. This departure from the factors enunciated by this Court has consequences far more important than the conflict with the precedents of this Court. The decision of the Louisiana Supreme Court rejects any uniformity in the federal maritime law and casts aside the fundamental principle of comity which underlies international law.

The thrust of Respondents' argument is to characterize this case as a disagreement over a factual conclusion. However, the only factual dispute arises because of Respondents' fourteen points, not because of the factors set out by this Court in *Lauritzen-Rhoditis*.[1] Respondents'

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[1] Failing to satisfy the *Lauritzen-Rhoditis* factors, Respondents allege numerous points which have no relevance to the *Lauritzen-Rhoditis* factors in an attempt to circumvent the *Lauritzen-Rhoditis* test. Not only are many of the allegations not found within the record, some of them are simply false. Despite their immateriality, Petitioner feels compelled to point out some

of the major factual errors:

1. Petitioner's corporate restructuring was done for bona fide business reasons many years before the Louisiana Supreme Court decided Powell v. McDermott International, Inc., 588 So.2d 84 (La. 1991).

2. Malmac is neither managed nor controlled by McDermott International, Inc., which only owns 30% of Malmac's stock.

3. The DB-52 was performing Malmac's work. Malmac was a party to a contract dated October 5, 1990 with Esso Production Malaysia, Inc. covering 1991 offshore installations.

4. The DB-52 was located on the Malaysian Continental Shelf at the time of Mr. Beasley's accident and was subject to the Malaysian Continental Shelf Act.

5. Prior to his accident, Beasley worked in Southeast Asia pursuant to an employment contract which terminated at the completion of the job in April 1990. Beasley returned to the United States and could have sought any employment he desired. Beasley voluntarily returned to Southeast Asia and signed a new employment contract on November 20, 1990 which was assigned to Malmac. Prior to his accident in June 1991, Beasley travelled to the United States on at least two occasions. Obviously he was not employed in an adhesion situation and had ample opportunity to seek employment elsewhere if he wished to do so.

6. Both the February 1990 and November 1990 contracts signed by Beasley were assigned to

brief exemplifies the morass that will occur in every choice-of-law case if Respondents' fourteen points are allowed to supplant the *Lauritzen-Rhoditis* factors enunciated by this Court. In contrast to Respondents' fourteen points, the *Lauritzen-Rhoditis* factors unequivocally point to the application of Malaysian law in this case. The Louisiana Court of Appeal below properly weighed the factors set out by this Court and found that the overwhelming weight of the *Lauritzen-Rhoditis* factors favored application of Malaysian law. Contrary to Respondents' assertion, it has not been and will not be necessary to grant a writ of certiorari in every international choice-of-law case. The reason Petitioner has sought a writ in this case is because the Louisiana Supreme Court has deviated from the uniform interpretation given to *Lauritzen-Rhoditis* by the federal circuit courts. If the Court grants a writ of certiorari in this case, the Court can avoid the sea of confusion that the decision of the Louisiana Supreme Court will surely engender.

It is not merely ironic that Respondents' fourteen points are not the factors set out by this Court in *Lauritzen-Rhoditis*. In *Lauritzen*, this Court explained the reason for having international choice-of-law rules: "reconciling our own with foreign interests and . . . accommodating the reach of our own laws to those of other maritime nations." *Lauritzen*, 345 U.S. at 577. The points raised by Respondents have absolutely nothing to do with the needs of international commerce, mutual forbearance in international relations and respect for sovereign nations. *Lauritzen*, 345 U.S. at 582. Respondents' brief asserts the same parochial

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Malmac when Beasley worked on the Malaysian Continental Shelf.

attitude as that taken by the Louisiana Supreme Court.[2] That is, the Louisiana Supreme Court can apply whatever law it desires for localized operations in a foreign country, regardless of international implications.

Even if the Louisiana Supreme Court is permitted to weigh the choice-of-law factors in its own fashion so as to reach a conclusion diametrically opposed to those of all of the federal circuit courts, there still has to be some limit. The Louisiana Supreme Court simply cannot apply American law to every localized operation conducted under foreign law by foreign citizens in foreign countries. Therefore, Petitioner respectfully prays that this Court grant the writ of certiorari.

2. Conflict With The Federal Decisions

Respondents' assertion that there is no conflict between the opinion of the Louisiana Supreme Court and the

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Respondents' remarks about the "black hole" of Malaysian law and caning are not only demeaning, they are inaccurate. However, they are indicative of the protectionist attitude espoused by Respondents that American law must follow Americans wherever they go around the world. In truth, Malaysia has a well-developed and mature legal system regulating personal injury claims. The adequacy of Malaysian law was established without opposition by the lengthy affidavit of W.S.W. Davidson, Esq., an Advocate and Solicitor who has been practicing law in Malaysia since 1964 and who has been involved in litigation in the Malaysian courts, including the Supreme Court of Malaysia, as well as in the Privy Council in London on behalf of Malaysian clients. Respondents also supplied the Malaysian Continental Shelf Act and the Malaysian Civil Law Act. Respondents' contention that Petitioner has failed to establish the adequacy of Malaysian law is simply not correct.

uniform precedents of the federal circuit courts is contradicted by the cases they cite. The direct conflict between the Louisiana Supreme Court and the decisions of the federal circuit courts in applying the *Lauritzen-Rhoditis* factors is demonstrated by a comparison of *Beasley* with *Schexnider v. McDermott International, Inc.*, 817 F.2d 1159 (5th Cir.), *cert. denied*, 484 U.S. 977 (1987) and *Fogleman v. Aramco (Arabian American Oil Co.)*, 920 F.2d 278 (5th Cir. 1991):

	Beasley	***Schexnider***	***Fogleman***
Wrongful Act	Foreign	Foreign	Foreign
Flag	Foreign	Foreign	Foreign
Domicile of Injured	United States	United States	United States
Allegiance of Shipowner	Foreign	Foreign	Foreign
Place of making of Contract	Foreign; Prior One In United States	United States	Obtained in United States, Signed Foreign
Place of Performance of Contract	Foreign	Foreign	Foreign
Base of Operations	Foreign	Foreign	Foreign

Considering the factors set forth by this Court,[3] these cases are identical. If anything, *Schexnider* presents a stronger case for application of American law because Beasley executed his employment contract at his designated foreign work location, whereas Schexnider signed his contract in the United States. Respondents make no attempt to distinguish *Fogleman*, and they state, paradoxically, that the corporations involved in *Schexnider* did not conduct any business in the United States. Yet, Petitioner, McDermott International, Inc., is the identical corporation involved in *Schexnider*. *Schexnider* and *Beasley* present the same corporation and the identical *Lauritzen-Rhoditis* factors. The *only* reason for a different result is the fact that the suit in *Beasley* was filed down the street at the state courthouse.[4]

Respondents cite two cases for the proposition that American law has been applied to Americans injured on foreign vessels in foreign waters. *Coats v. Penrod Drilling Corp.*, 5 F.3d 877 (5th Cir. 1993), *rehearing en banc granted*, 20 F.3d 614 (5th Cir.), *cert. denied*, 114 S. Ct. 1303 (1994); *Symonette Shipyards*,

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3

Two factors mentioned in *Lauritzen*, inaccessibility of a foreign forum and the law of the forum, are not included in the chart as this Court did not consider them important in determining choice of law. *Lauritzen*, 345 U.S. at 589-91.

4

Respondents spend considerable effort stating that the writ should not be granted because Petitioner has not conclusively established the adequacy of Malaysian law. In the first place, this is not a factor cited by this Court in *Lauritzen-Rhoditis*, and the adequacy of the foreign forum has not been considered relevant by most of the federal circuit courts. *E.g.*, *Fogleman*, 920 F.2d at 283. To the extent that there is a conflict between the circuit courts and this Court or between the circuit courts, that conflict is another reason for this Court to grant Petitioner's writ of certiorari. However, in answer to Respondents' contention, Petitioner established *without contradiction* that Malaysian law is adequate. *See supra* note 2.

Ltd. v. Clark, 365 F.2d 464 (5th Cir. 1966). Contrary to Respondents' argument, Coats was *not* injured on a foreign vessel. In fact, Coats was injured on a United States flagged vessel owned by a United States company with its headquarters in Dallas. *Coats*, 5 F.3d at 887. Citing *Lauritzen's* analysis giving the law of the flag "cardinal importance," as well as the American allegiance of the shipowner and plaintiff, the Fifth Circuit applied American law. *Id.* (quoting *Lauritzen*, 345 U.S. at 583-84). Applying the *Coats* decision in *Beasley*, however, compels the opposite result that Malaysian law applies to the Malaysian vessel, owned by a Malaysian company, and operating on the Malaysian Continental Shelf. The other case cited by Respondents, *Symonette*, involved Americans employed by an American businessman in the United States for his enterprise in Haiti. *Symonette*, 365 F.2d at 467. Respondents do not, and cannot, cite to a case like the present, where the worker was injured on a Malaysian vessel on the Malaysian Continental Shelf, while employed by a Malaysian company, owned by Malaysians, pursuant to an employment contract providing a Malaysian remedy, which Beasley claims to have signed in Malaysia, and yet the court applied American law.

In summary, a comparison of the identical cases, *Schexnider*, *Fogleman* and *Beasley*, demonstrates that, unless the situation is corrected, the decision in future cases will no longer be based on the precedents of this Court. Instead, the result will be based on the forum for the suit. Therefore, Petitioner respectfully prays that this Court grant a writ of certiorari to resolve this conflict between the federal circuit courts and the Louisiana Supreme Court.

3. Conclusion

Respondents' brief substitutes unsubstantiated accusations for legal support. Even these accusations, however, reflect that

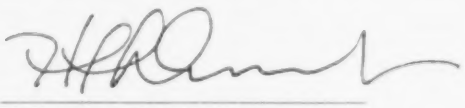
Malaysian law should apply in this case.[5] In order to perform localized construction operations in foreign countries, international companies such as Petitioner are required to subject themselves to local law. Therefore, they must contract with local companies which are owned and controlled by local citizens. There is nothing sinister about this, and there is no attempt to manipulate the judicial system. In fact, the United States has similar statutes which require American ownership of vessels which carry certain goods or which are engaged in coastwise trade in the United States. Surely an American company would not expect a Malaysian court to apply Malaysian law to an American company owning an American vessel, employing a worker in the United States pursuant to United States law and injuring that worker in the United States. Just as Petitioner must strictly comply with local law when it wants to do business in Malaysia, so too did Mr. Beasley subject himself to Malaysian law when he signed his employment contract on a vessel in Malaysia to work in a construction operation on the Malaysian Continental Shelf. A proper and uniform application of the *Lauritzen-Rhoditis* factors leads to no other result.

5

For example, Respondents devote a section of their argument to an attack on the employment contract signed by Mr. Beasley in Malaysia which was assigned to Malmac pursuant to Malaysian law. Whether Plaintiff accepts this contract or intends to rely on his former contract is not pertinent to this case. *Both* contracts provided for Mr. Beasley to work in Southeast Asia. Both contracts were assigned to Malmac when Beasley worked on the Malaysian Continental Shelf. As in *Schexnider*, 817 F.2d at 1162, what is important is the fact that the employment contract specified the employment was for Southeast Asia.

WHEREFORE, Petitioner, McDermott International, Inc., respectfully prays that this Court grant Petitioner's writ of certiorari.

Respectfully submitted,



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